

Congress of the United States
Washington, DC 20515

August 26, 2020

The Honorable Sean O'Donnell
Acting Inspector General
U.S. Department of Defense
4800 Mark Center Drive
Alexandria, VA 22350-1500

Dear Mr. O'Donnell:

On July 21, 2020, the Committee on Oversight and Reform and the Permanent Select Committee on Intelligence requested that the Department of Defense Office of Inspector General (DOD IG) open an investigation into the Trump Administration's apparent retaliation against U.S. Army Lieutenant Colonel (LTC) Alexander Vindman for his congressional testimony during the impeachment inquiry of President Donald J. Trump, as well as whether that effort may have included retaliation against his brother, LTC Yevgeny Vindman (LTC Y. Vindman).¹

Since then, our Committees have obtained a complaint filed with your office on August 18, 2020, by LTC Y. Vindman. It raises disturbing new allegations which, if true, would further substantiate our concerns that he was retaliated against for making protected disclosures about potential legal and ethical violations committed by multiple White House officials, including President Trump.²

Based on this new information, it is all the more urgent that the DOD IG immediately investigate whether adverse personnel actions taken against LTC Alexander Vindman and LTC Y. Vindman were carried out in retaliation for their protected disclosures, and that your investigation include a close examination of actions taken by White House officials. If the White House refuses to cooperate fully—including by denying requests for documents or for interviews with White House officials—we will have no other choice but to infer that any such actions were retaliatory.

LTC Y. Vindman appears not only to have been punished for raising concerns to National Security Council (NSC) lawyers about President Trump's July 25, 2019, phone call with Ukrainian President Volodymyr Zelensky, but also for reporting multiple allegations that Assistant to the President for National Security Affairs (APNSA) Robert O'Brien and NSC Chief of Staff (CoS), Alex Gray, committed several ethics and legal compliance violations, misused

¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, Chairman Adam Schiff, Permanent Select Committee on Intelligence, and Chairman Stephen F. Lynch, Subcommittee on National Security, Committee on Oversight and Reform, to Acting Inspector General Sean O'Donnell, Department of Defense (July 21, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-07-21.CBM%20Schiff%20SFL%20to%20ODonnell-DOD%20IG%20re%20Vindman%20Retaliation.pdf>).

² Whistleblower Reprisal Complaint in the Matter of Lieutenant Colonel Yevgeny Vindman (Aug. 18, 2020).

government resources, excluded women from meetings, and made sexist and demeaning remarks to female NSC staffers, including inappropriately commenting on women's looks and "talk[ing] down" to women.

As a Deputy Legal Advisor and a senior ethics official on the NSC staff, LTC Y. Vindman had a duty to report such concerns and allegations through his chain of command and would have been derelict had he refrained from doing so.

LTC Y. Vindman outlined these concerns in a memorandum to the DOD Office of General Counsel within a month of his abrupt removal from the NSC staff. The March 6, 2020, memorandum, which is attached to the complaint, states:

During the fall of 2019 to February 2020, I became aware of legal compliance and ethics violations involving Robert O'Brien, Assistant to the President and National Security Advisor (NSA) and Alex Gray, Deputy Assistant to the President (DAP) and National Security Council (NSC) Chief of Staff (CoS). Specifically, there were allegations of sexism, violations of standards of ethical conduct for employees and violations of the Anti-Deficiency Act. These violations were within my purview as the senior ethics official on the NSC staff and NSC Deputy Legal Advisor. I notified my supervisors on the NSC staff and White House Counsel's Office about each of these concerns. To my knowledge no action was taken. Consequently, my professional obligations persist. While any of these infractions are serious, together they form a disturbing pattern of flagrant disregard for rules. I fear that if this situation persists, personnel will depart and national security will be harmed. I request you inquire into the facts and allegations herein and take appropriate action.

Legal and Ethical Concerns Raised by LTC Yevgeny Vindman

LTC Y. Vindman's complaint details allegations of legal and ethical violations committed by White House officials that he both personally witnessed and became aware of in his capacity as an NSC Deputy Legal Advisor and a senior ethics official on the NSC staff.

LTC Y. Vindman reports that between July 25 and August 5, 2019, he had at least three conversations with John Eisenberg, the NSC Legal Advisor and Deputy White House Counsel, in which LTC Y. Vindman raised his "reasonable and good faith" concerns about President Trump's July 25, 2019, phone call with Ukrainian President Zelensky, which ultimately led to the President's impeachment by the House of Representatives.

In the fall of 2019, LTC Y. Vindman voiced concern about APNSA O'Brien's use of official resources for personal activities. Specifically, LTC Y. Vindman reported to his supervisors that APNSA O'Brien's planned government-funded travel to Utah and California with his wife, which included a speaking engagement in front of the Brigham Young University Air Force ROTC Unit where O'Brien's daughter was a member of the Corps of Cadets, would create an "appearance of impropriety and personal conflict of interest." LTC Y. Vindman was subsequently told that future ethics reviews involving Mr. O'Brien's engagements with private entities would be removed from his portfolio and instead vetted through the White House Counsel's Office.

According to LTC Y. Vindman's complaint, this was not the first time that APNSA O'Brien resisted federal ethics laws. During an initial ethics briefing that LTC Y. Vindman provided to APNSA O'Brien in mid-September 2019, LTC Y. Vindman stated that O'Brien "became agitated and angry" when LTC Y. Vindman and his colleagues "advis[ed] Mr. O'Brien about conflicts of interest and gifts from private entities, including the rules governing who, for example, could buy him lunch or dinner." When told about certain limitations to the gift acceptance rules, APNSA O'Brien reportedly "yelled" at LTC Y. Vindman because O'Brien did not agree with them.

On January 30, 2020, LTC Y. Vindman met with NSC Legal Advisor John Eisenberg and NSC Deputy Legal Advisor Michael Ellis to discuss a series of potential legal and ethical violations involving APNSA Robert O'Brien and NSC CoS Alex Gray.

According to the complaint, LTC Y. Vindman learned, in his capacity as senior NSC ethics official, of allegations that "APNSA Robert O'Brien and NSC CoS Alex Gray engaged in demeaning and demoralizing sexist behavior against ... female NSC professionals." The complaint includes specific allegations about APNSA O'Brien and CoS Gray's behavior, which, if true, are unacceptable. For instance, LTC Y. Vindman was told that "NSA [National Security Advisor] O'Brien and the CoS Gray would inappropriately comment on women's looks, 'talk down' to women and exclude women from meetings."

In addition, LTC Y. Vindman raised concerns with Eisenberg and Ellis that APNSA "O'Brien and CoS Gray were misusing NSC staff official time for personal errands including scheduling haircut appointments, retrieving personal luggage and to coordinate personal dinner arrangements."

While meeting with Mr. Eisenberg and Mr. Ellis in late January, LTC Y. Vindman also shared his concerns that, on at least two occasions, APNSA O'Brien had circumvented government ethics standards. In the first instance, APNSA O'Brien offered during a December 19, 2019, meeting to connect SpaceX Chief Executive Officer Gwynne Shotwell with DOD and other relevant agencies to discuss "certain specific SpaceX capabilities," which LTC Y. Vindman thought might qualify as an "improper endorsement" from the White House. After the December 19, 2019, meeting, LTC Y. Vindman raised these concerns to Ellis, who told him not to attend another meeting with O'Brien and a private entity again.

Finally, APNSA O'Brien reportedly accepted a meeting in or around late January 2020 with U.S. Postal Service (USPS) Board of Governors Member John Barger under the pretense of a social call, even though the USPS Governor described the purpose of the meeting as "5G and the USPS/ Autonomous vehicles,/ etc." According to LTC Y. Vindman, "The NSA appeared to be granting preferential access to the White House to a friend in an apparent violation of relevant ethics rules."

LTC Y. Vindman memorialized the allegations he discussed with Ellis and Eisenberg on January 30, 2020, in a March 6, 2020, memorandum to the DOD Office of General Counsel, which is attached to the complaint, following the termination of his detail to the NSC staff. In the memorandum, LTC Y. Vindman wrote that as a result of these legal and ethical violations, "I remain gravely concerned that the climate in the NSC is toxic and that leadership does not have

regard for rules and standards. If this situation persists, personnel will depart and national security will be harmed.”

White House Retaliation Against LTC Yevgeny Vindman

The Trump Administration appears to have taken a series of personnel actions against LTC Y. Vindman in retaliation for joining his brother in raising concerns within his rating chain about the President's July 25, 2019, phone call with the Ukrainian president and for subsequently reviewing and raising allegations of legal and ethical misconduct by APNSA O'Brien and CoS Gray. These actions include reducing LTC Y. Vindman's portfolio of responsibilities, excluding him from important NSC meetings and official events, removing him from his NSC position and escorting him and his brother off the White House grounds, and filing a derogatory performance review.

The Trump Administration's retaliation campaign against LTC Y. Vindman is best exemplified by two officer evaluation reports (OER) issued by Eisenberg before and after President Trump's July 25, 2019, phone call with Ukrainian President Volodymyr Zelensky and ensuing events.

The first OER, dated July 1, 2019, stated:

Yevgeny (Yev) is the epitome of an Army officer and lawyer. He is a hard-working, disciplined, tough-minded team player who manifests the Army Values. He is unremittingly honest in delivering legal advice, without concern of repercussions. Yev does the right thing and is approachable and personable. ... Yev is a top 1% military attorney and officer and the best LTC with whom I have ever worked. Functioning at the executive level, he advises White House senior staff with skill, tact, and judgment on matters of geostrategic importance. Sought by White House staff regularly, he can do any job in the legal field under unusual and constant pressure and scrutiny. Select now for SSC [Senior Service College] and promote immediately to COL [Colonel]. Absolutely unlimited potential!

Yet, in LTC Y. Vindman's OER issued by Eisenberg on April 6, 2020, Eisenberg wrote:

During the prior reporting period and early portions of the reporting period, LTC [Y.] Vindman performed his duties satisfactorily. Over time, LTC [Y.] Vindman displayed increasingly poor judgment and failed to learn from his mistakes. On multiple occasions, his unprofessional demeanor made NSC staff feel uncomfortable. Despite express guidance from his supervisor, he continued to add himself to meetings with senior NSC staff where he did not add value. LTC [Y.] Vindman's substandard performance—his lack of judgment, failure to communicate well with his superiors, and inability to differentiate between legal and policy decisions—caused him to lose the trust of NSC senior leadership. ... With additional counseling and experience, LTC [Y.] Vindman's performance may improve. He would benefit from additional experience in a slower-paced work environment subject to less pressure and scrutiny. In time, he may become a better attorney.

The drastic change between these performance evaluations during the specific timeframe in which LTC Y. Vindman raised ethics and legal compliance concerns within his rating chain and with NSC leadership, coupled with other personnel actions taken against LTC Y. Vindman, provide evidence of the pattern of retaliatory actions taken against him. The final performance evaluation also stands in stark contrast to the supporting letters and statements from LTC Y. Vindman's former peers and leadership on the NSC staff, which are from July and August 2020, and are attached to the complaint.

Request for DOD IG to Launch Investigation

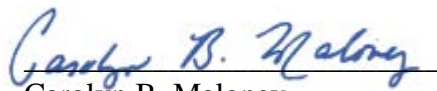
For all the above reasons, we respectfully ask you to examine whether personnel actions taken against commissioned military officers, LTC Alexander Vindman and his brother LTC Yevgeny Vindman, were acts of unlawful retaliation, including actions taken by President Trump, APNSA O'Brien, CoS Gray, or other White House officials. We also ask you to examine whether any White House officials, including on the NSC staff, sought to create an inhospitable work environment for the two brothers during their service at the White House. As noted above, we will have no other choice but to draw an adverse inference from any refusal by the White House to cooperate fully with your investigation.

The DOD OIG has the authority to investigate allegations of whistleblower reprisal against military personnel in order to defend the political independence of the United States Armed Forces. It is imperative that LTC Y. Vindman, who dedicated his career to serving his country, be given the opportunity to have the allegations he has raised be reviewed appropriately and independently, without political interference from the White House.

Please respond to our committees by Tuesday, September 1, 2020, to advise whether you intend to open an investigation into these allegations of political and retaliatory harassment.

If you have any questions regarding this request, please contact Committee on Oversight and Reform staff at (202) 225-5051, Permanent Select Committee on Intelligence staff at (202) 225-7690, or Armed Services Committee staff at (202) 225-4151.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
Permanent Select Committee on
Intelligence



Adam Smith
Chairman
Committee on Armed Services



Stephen F. Lynch
Chairman
Subcommittee on National Security
Committee on Oversight and Reform

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
Permanent Select Committee on Intelligence

The Honorable Mac Thornberry, Ranking Member
Committee on Armed Services

The Honorable Glenn Grothman, Ranking Member
Subcommittee on National Security
Committee on Oversight and Reform